

## **REMARKS**

Claims 1-10 are pending in the above-identified application.

### **Resolution of Abstract, Specification and Claim Objection Issues**

In response to the request in the Office Action of March 3, 2008 that an Abstract be submitted and that the Specification be amended to include appropriate headings, these changes have been made as indicated above. Further in response to the objection to the claims, claim 1 has been amended as suggested at page 5 of the Office Action. Therefore, it is submitted that the issues discussed in the insert of the Office Action on pages 4-5 regarding the Abstract, Specification and Claims have been resolved such that these objections should be withdrawn.

### **Unity of Invention Issues**

It is acknowledged that the Unity of Invention Requirement has been maintained and made “final”. This Requirement continues to be respectfully traversed by Applicant. It is respectfully submitted that the basis for the Requirement rests on the argument stated at the bottom of page 2 of the Office Action that, “Since the replacement of a phenyl [in the cited Gohda et al. reference (Quantitative Structure-Activity Relationships, 20 (2001), pp. 143-147)] with an alkyl group does not alter the activity of the triazolopyrimidine as a fungicidal agent, ... there is no special technical feature at this point”. In this regard, it is noted that the “special technical feature” is defined in PCT Rule 13.2 to be “a contribution which ...the claimed [invention], considered as a whole, makes over the prior art”. In the present situation, the difference between the alkyl-compounds of the present invention and the phenyl-compounds of Gohda et al. constitutes a special technical feature, since this feature fails to be either disclosed or suggested by the Gohda et al. reference. It is irrelevant that Gohda et al. also discloses fungicidal compounds, since the question is not whether the new compounds of the present invention also exhibit fungicidal properties, but whether Gohda et al. can be used as prior art to establish that the special technical feature of the claimed compounds of the present invention are unpatentable. Gohda et al. fails to support a proper allegation of unpatentability, such that the

differing structural features of the compounds of the present invention indeed do constitute special technical features that support a withdrawal of the Unity of Invention Requirement. It is further submitted that the Requirement should be withdrawn for the reasons previously indicated in the Response filed on December 21, 2007, which reasons are deemed repeated herein. Therefore, it is respectfully requested that the Examiner again re-consider the Requirement and withdraw it.

Double Patenting Issues

Claims 1-5 and 8 have been “provisionally” rejected on the ground of obviousness-type double patenting based on each of: (1) Blasco '061 (US 2007/0179061 A1); and (2) Blasco '408 (US 2007/0173408 A1). These rejections are respectfully traversed based on the following reasons.

First, it is requested that the above-noted double patenting rejections be withdrawn until at least one of the present application, Blasco '061 or Blasco '408 grants as a patent in view of the “provisional” nature of these rejections. Secondly, it is respectfully submitted that even though the chemical structures of the claimed compounds are similar to the compounds claimed in Blasco '061 and Blasco '408, it is insufficient to allege obviousness (in the context of a double patenting rejection) simply based on the assertion that the chemical structures are “homologs”. In this regard, it is noted that even if a homolog or very similar chemical structure is described in what is deemed to be the scope of the prior art, given the unpredictability associated with the structure and properties of chemical compounds, the prior art must at least provide some basis for a suggestion to one skilled in the art to make and test the claimed compounds. *Takeda Chem. v. Alphapharm Pty.*, 83 USPQ2d 1169 (Fed. Cir. 2007). In *Takeda*, despite the fact that the prior art disclosed a homolog, the absence of any suggestion or basis to change the prior art methyl group to an ethyl group as claimed supported a conclusion of non-obviousness. This case applies to the present situation, since Blasco '061 and Blasco '408 both fail to provide an adequate basis for motivation to one skilled in the art to change the structures claimed therein in order to obtain the chemical compounds of the present claims. Note that only the disclosure of the claims of

Blasco '061 and Blasco '408 can be used in order to report an obviousness type double-patenting rejection. Thus, it is additionally submitted that the above rejections should be withdrawn for these reasons.

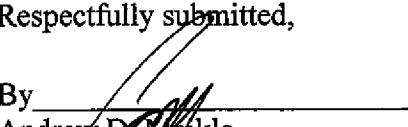
It is submitted for the reasons above that the present claims define patentable subject matter such that this application should now be placed in condition for allowance.

If any questions arise in the above matters, please contact Applicant's representative, Andrew D. Meikle (Reg. No. 32,868), in the Washington Metropolitan Area at the phone number listed below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Dated: May 30, 2008

Respectfully submitted,

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